IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 30528 of 2005(H)

PETITIONER:

ANAD FARMER'S SERVICE CO-OPERATIVE
BANK LTD.NO.919, ANAD P.O., NEDUMANGAD REP.
BY ITS PRESIDENT M. ABDUL RAZAK.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SMT.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENTS:

1.THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL),
THIRUVANANTHAPURAM.

2.THE DISTRICT CO-OPERATIVE BANK,
THIRUVANANTHAPURAM, REP. BY ITS
GENERAL MANAGER.

3.G. JAYAKUMAR @ ANAD JAYAN,
PALOTTUKONATHU PUTHEN VEEDU,
ANAD VILLAGE, NEDUMANGAD.

R1 BY GOVT. PLEADER MR.JAMES MATHEW KADAVAN
R2 BY ADV. SRI.T.R.HARIKUMAR, S.C T.D.CO-OPB
R3 BY ADV.SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007 ALONG WITH WPC NO. 35087 OF 2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.30528 OF 2005)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE RESOLUTION NO.192 DATED 3.9.2005 OF THE PETITIONER'S BANK.

EXT.P2: TRUE COPY OF THE RESOLUTION NO.405 DATED 17.1.2004 OF THE PETITIONER'S BANK.

EXT.P3: TRUE COPY OF THE LETTER NO.291/05 DATED 17.10.2005 FROM THE PETITIONER TO THE 1ST RESPONDENT.

PIUS C. KURIAKOSE,J.

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W.P.(C)Nos.30528 & 35087 of 2005

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Dated: 13th March, 2007

JUDGMENT

W.P.C.No.30528 of 2005 has been filed by the Anad Farmer's Service Co-operative Bank Ltd. arraying the Joint Registrar of Co-operative Societies(General), Trivandrum, the District Co-operative Bank, Thiruvananthapuram and one G.Jayakumar @ Anad Jayan as respondents seeking a writ of mandamus commanding respondents 1 and 2 to take immediate steps for allowing Sri.B.Appukuttan Nair who had been delegated to the 2nd respondent-Bank to assume charge after removing the third respondent who had been nominated as the delegate of the petitioner-Bank to the 2nd respondent-Bank and also for a declaration that the delegation of the third respondent to represent the petitioner-Bank in the 2nd respondent-Bank ceased to exist with effect from 8.1.2004, the date on which the newly elected committee assumed charge. The petitioner-Bank states that the elected committee of the Bank had been removed and an Administrative Committee assumed office for the administration of the Bank in December, 2001. The third respondent was a member of the Administrative Committee. The Administrative Committee nominated the third respondent as the delegate of the Bank to the 2nd respondent-Bank. The Administrative Committee was removed when

a new Committee was elected on 28.12.2003. The new Committee assumed charge on 8.1.2004. The new Committee adopted Ext.P2 resolution on 17.1.2004 to withdraw the nomination of the third respondent to the 2nd respondent-Bank and to nominate Sri.B.Appukuttan Nair, a member of the Director Board of the petitioner-Bank as delegate of the Bank to the 2nd respondent-Bank. Even though copies of Ext.P2 had been forwarded to the 2nd respondent and also to the 1st respondent, no steps have been taken for withdrawing the nomination of the third respondent and to bring into effect the nomination of Appukuttan Nair as delegate of the Bank to the 2nd respondent-Bank in spite of several requests in that regard. Various letters were sent on behalf of the Bank by the President to the 1st respondent reminding him about Ext.P2 resolution. But those letters were of no avail. Finally the first respondent was requested to take urgent steps for recognising Mr.Appukuttan Nair as delegate of the Bank to the District Co-operative Bank and allow him to assume charge as such. Ext.P3 is copy of that letter. The grievance of the petitioner is that no steps have been taken on Ext.P3 so far. It is on the above averments that the petitioner refers to Rule 46(a) and (g) of the Kerala Co-operative Societies Rules and have filed the Writ

Petition for the reliefs already indicated.

2. W.P.C.No.35087 of 2005 is filed by Sri.Anad Jayan, the third respondent in W.P.C.No.30528 of 2005 arraying the Registrar of Co-operative Societies, Thiruvananthapuram, the District Co-operative Bank, Thiruvananthapuram, Anad Farmer's Service Co-operative Bank, Thiruvananthapuram and Sri.Appukuttan Nair as respondents. Ext.P1 is copy of the resolution by which the petitioner was delegated to the District Co-operative Bank, Thiruvananthapuram and Ext.P1(a) is the authorisation to the petitioner for contesting election to the Director Board of the District Co-operative Bank, Trivandrum. The petitioner submits that he was sent as delegate of the Anad Farmers Service Co-operative Bank at a time when that Bank was managed by a U.D.F.Board. But in the subsequent election the administration of the Bank has fallen into the hands of the L.D.F.Board. So the L.D.F.Board has withdrawn the petitioner's delegation on 17.1.2004 and deputed the 4th respondent as delegate to the 2nd respondent-Bank. Alleging that the untimely withdrawal of delegation of the petitioner is a political game to see that a U.D.F. member looses his Director Board membership in the District Co-operative Bank and an attempt to topple the Board of Directors of the District Co-operative

Bank itself, the petitioner has filed this Writ Petition seeking the following reliefs:

1. A writ of mandamus commanding respondents 1 and 3 not to take any action for the petitioner loosing his membership in the Board of Directors of the 2nd respondent-Bank before the expiry of the term for which he was elected to the Board.

2. A declaration that by withdrawal of delegation of the petitioner in the general body of the District Co-operative Bank, Thiruvananthapuram his election to the Board of Directors of the Bank is not affected as his election to the Board was as a result of expression of desire of the members of the general body of that Bank.

3. A declaration that election to a Board can be set aside only by a properly constituted election petition as per Section 69 of the Kerala Co-operative Societies Act and that the same cannot be allowed to be achieved indirectly by withdrawal of his delegation as it is ultra vires to the provisions of the Kerala Co-operative Societies Act.

3. I have heard the submissions of Mr.V.N.Achutha Kurup, Senior Counsel for the petitioner in W.P.C.No.30528 of 2005, Mr.D.Somasundaram, counsel for the petitioner in W.P.C.No.35087 of

2005 and Mr.T.R.Harikumar, Standing Counsel for the Trivandrum District Co-operative Bank Ltd. My attention was drawn by the counsel to Section 28 of the Co-operative Societies Act and Rule 46 (a) and (g) of the Kerala Co-operative Societies Rules. Counsel places reliance on various judicial precedents particularly the judgment of the Division Bench of this court in **K.N.Gangadharan Nair v. George O.Thettayil** (1993(2) K.L.J. 864).

4. Having considered the rival submissions addressed at the bar and having gone through the statutory provisions, namely Rules 46 (a) and (g) of the Kerala Co-operative Societies Rules, 1969 and the Division Bench judgment of this court in **K.N.Gangadharan Nair v. George O.Thettayil** (1993(2) K.L.J. 864), I am of the view that since Anad Jayan ceased to be a member of the Committee of the Anad Farmer's Service Co-operative Bank Ltd., his delegation by that Bank to the Director Board of the Central Society, the Thiruvananthapuram District Co-operative Bank Ltd. also ceases. Under these circumstances, Writ Petition No.35087 of 2005 will stand dismissed and Writ Petition No.30528 of 2005 will stand disposed of directing respondents 1 and 2 therein to take immediate steps for allowing Mr.B.Appukuttan Nair who had already been

delegated by the 2nd respondent-Bank to assume charge after removing the third respondent if Mr.Appukuttan Nair has not already been permitted to assume charge of the Director Board of the District Co-operative Bank. The needful will be done by respondents 1 and 2 in W.P.C.No.30528 of 2005 within two weeks of receiving a copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**